15

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 373.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFF IN ERROR,

vs.

J. P. KELLY, A. P. HICKAM, AND G. E. WOLIVER, PARTNERS IN TRADE UNDER THE FIRM NAME AND STYLE OF KELLY, HICKAM COMPANY.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED OCTOBER 31, 1912.

(23,412)

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1 In the Supreme Court of Appeals of Virginia, at Wytheville.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff,

v.

KELLY HICKAM COMPANY, Defendants.

From the Circuit Court of Lee County.

Petition for Writ of Error.

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, Keokee Consolidated Coke Company, a corporation, respectfully shows unto your honors that it is aggrieved by a final order entered by the Circuit Court of Lee County, on the 16th day of September, 1910, in an action at law pending in said court wherein Kelly Hickam Company, a partnership, composed of J. P. Kelly, A. P. Hickam and G. E. Woliver, were plaintiffs and your petitioner was defendant, which order gave judgment against your petitioner for the sum of $438.84, with interest from January 1, 1910, and the costs of suit, and it desires a writ of error to the said order, and accompanies this, its petition, with a complete transcript of the record in said cause.

2 I.

Pleadings and Facts.

In April, 1910, two suits at law, being actions in assumpsit, were filed in the Circuit Court of Lee County, by the Kelly Hickam Company, one against your petitioner, the Keokee Consolidated Coke Company, the other against the Keokee Coal & Coke Company. Both were of the same nature, and both sought to recover a money judgment on a series of orders, commonly called scrip, which it was alleged had been issued by the two defendant companies, in small amounts, to various employees which had been assigned by said employees to the plaintiffs. Your petitioner, the Keokee Consolidated Coke Company, filed a plea setting forth that the Keokee Coal & Coke Company, a foreign corporation, had, prior to the bringing of said suits, been dissolved and all its rights and liabilities had devolved upon petitioner. On the 16th day of September, 1910, an agreement of facts, signed by counsel for both parties, was filed, which was to constitute all the evidence in the cause; a jury was waived and all questions of law and facts were submitted to the court for its decision, whereupon the court gave judgment against petitioner, as aforesaid (P. 9). This order shows that petitioner raised the constitutional question, both as to the Constitution of Virginia and of the United States against the entering of a money judgment

on the claim sued upon. A bill of exceptions was taken, and the action of the court was excepted to, and the court was moved to set aside the judgment and give judgment in favor of the petitioner, which motion was overruled.

3

The facts show that petitioner is a coal mining and coke manufacturing company, with its chief plant located in Lee County, Virginia, and it employs a large number of laborers; that it has one regular pay-day each month, at which time it pays to all its employés, in cash, all that is shown to have been due them at the end of the last preceding calendar month on the books of the company; that any laborer so desiring could, during the month, and before pay-day if anything should be due him *could* apply at the Company's office and sign a so-called Scrip Order, which being properly filled up and dated is delivered to him and with it he could buy at the Company's Commissary any amount of goods, not exceeding the face amount of said order. The custom of Petitioner was never to redeem any of this so-called Scrip in money, but it always redeemed same in merchandise in its store whenever requested, and this custom was known to all of its employees, including those whose Scrip Orders were assigned to the Plaintiffs and form the basis of this Action. None of the Scrip sued on was ever presented for payment in merchandise. If it had been so presented it would have been paid in merchandise such as was kept in the Company's Store and at current prices. All this Scrip sued on was presented by the Plaintiffs and payment demanded in money, which was refused.

II.

Assignments of Error.

The Circuit Court of Lee County erred in its judgment herein; first, because the transaction under review does not violate the Act of Assembly of Va. of 1887-8 P. 131 (Code of 1904 Sec. 3657*d*) commonly known as the "Scrip Act."

4

Second; if the act under review should be held to violate this Statute then the Statute itself is unconstitutional.

That portion of the act which needs consideration here is a part of Section 3, as follows:

"That from and after the passage of this Act it shall not be lawful for any person, firm, company, corporation or association engaged in the business aforesaid, their clerk, agent, officer, or servant in this state to issue for payment of labor any order or other payment (paper?) whatever, unless the same purports to be redeemable for its face value in lawful money of the United States made payable on demand and without condition to employee or bearer, bearing interest at legal rate and redeemable by the person, firm, company, corporation, or association giving, making or issuing the same."

The so-called scrip in this case is not an "order" or "other payment," issued for the payment of labor, as contemplated by Section 3 of the Act in question.

It is an order issued by the laborer on the company payable to

bearer, and chargeable against his account. The laborer is free to issue such an order, and there is no ban in law against it—the company may accept it or it may not. The laborer cannot compel the company to accept it, but if it does accept it, it accepts it in the terms of the order; that is, payable in merchandise only. This order is payable to bearer. It is an order voluntarily made by a laborer on his employer. It is issued in favor of bearer and a third party holding it can stand in no higher rights than the laborer who issued it.

The evil aimed at by this statute was an order drawn and signed by the employer upon itself, or a third person, and payable to the laborer or to bearer, which it induced the laborer to accept for money due, and in lieu thereof. Such orders, payable in merchandise, are often issued by mining and manufacturing companies, and we believe they were the only form of so-called Scrip which was
5 in use in 1887, when the Act in question was passed. Coupled with this requirement of the act is the further one of a monthly pay-day. The evil aimed at was an infrequent pay-day, and the laborer, through his necessities, being compelled, or easily induced, to accept these orders issued by the company payable otherwise than in money. This was a form of oppression which the statute was designed to break up.

If, however, the laborer himself voluntarily and before any money becomes due and payable to him issues his own order upon his employer, payable otherwise than in money, the act in question is not violated.

In other words, the system under review in this suit is an advance to the laborer of a part or all of his wages before pay-day, and before anything becomes due to him, made upon the request of the laborer, and for his special benefit. There is no oppression under this system; on the contrary it is plainly beneficial to the laborer.

In the case at bar it is conceded that the employing company has a monthly pay-day and that it pays in cash the balance due to the laborer for his preceding month's work after deducting such advance payments as have been made to him and such other sums as he has directed to be deducted. The laborer is not required, and is not solicited, to make any of these scrip orders. He makes them voluntarily, and when made, they are charged against his account. By this system the laborer gets credit at the commissary which he could not otherwise get. Suppose this system were wiped out, what would be the result? The laborer would go to the company's commissary between pay-days and offer to purchase goods on credit and the goods would be sold him and the amount thereof would be charged against his labor account on the company's books, and on
6 pay-day he receives the balance due him in money. If the laborer should not be known by the commissary clerk to have any money due him, credit would probably be refused, or the clerk would apply to the bookkeeper to know the status of the laborer's account before making a sale. Now, in order to avoid this delay and confusion, under the system in question the laborer first applies to the bookkeeper or scrip clerk and learns that he has something

due him from the company; he then issues his order on the company for an advance payment of a part of what is due him, payable in merchandise. This order is accepted by the company and the laborer takes it to the commissary and presents it to the commissary clerk as an evidence of his standing on the books of the company. It is certain that the company is due him at least the amount of this order, and he is entitled to trade out that amount, either at one time or at several times. Instead of writing an acceptance on each separate order, the company has provided a book of printed blanks, with stubs, for time-saving and convenience. As the amounts are always small and the printing of these blanks is peculiar in form, it is not probable that there will be any counterfeiting; therefore, any order given by an employee on one of these blanks is treated by the company regularly as an acceptance. This is the entire transaction, and it does not violate either section 2 or 3 of the Act in question.

The plan sought to be prohibited by this Act was where the commissary privileges of the mining or manufacturing company were farmed out to third parties, as is still sometimes done, we believe. There the company gives an order not on itself, but on a third person in favor of an employee to satisfy his own requirements
7 and at the same time pay a bonus to the company; that is, he makes a double profit. Such a system is capable of abuses which are not possible under the system involved in this suit.

III.

The Act in Question is Unconstitutional.

The Act violates the Virginia Bill of Rights which provides that no man shall be deprived of his liberty except by the law of the land. It also violates the 14th Amendment of the Constitution of the United States.

This Statute, as Petitioner is advised, has never been passed upon directly by this Court. In Young's case 101 Va. 853 which was a case involving the constitutionality of the Trading Stamp Act of Virginia passed at the session of 1897-'8, that Act was held unconstitutional, as violating both the Virginia Constitution and that of the United States. Liberty, in this connection, was held to mean the right to earn a livelihood by any lawful calling, and to enter into all contracts which may be proper or necessary to earn such livelihood. The only power that a State has over such matters is what is generally known as the "police power," by which the State may control all matters pertaining to the public safety, the public health, or the public morals, and that as the Act there under review did not interfere with any one of these three things it was held an unwarranted interference with the private business of citizens and therefore unconstitutional and void.

We find upon investigation that this same Act, in its identical form, has been passed upon in two cases by the Supreme
8 Court of West Virginia and declared unconstitutional on the grounds above named. The Supreme Court of Pennsylvania

also held an act almost identical with this unconstitutional. The Pennsylvania case is that of Godcharles and others v. Wigeman, 6th At. Rep., 354 (October 4, 1886); the statute in that case required the payment of wages of laborers in iron mills, mines etc. to be paid at regular intervals and in lawful money of the United States. The Court in deciding that case holds as follows:

"The first, second, third and fourth sections of the Act of June 29th, 1881, are utterly unconstitutional and void, inasmuch as by them an attempt has been made by the Legislature to do what, in this country, cannot be done; that is, prevent persons who are sui juris from making their own contracts. The act is an infringement alike of the rights of the employer and of the employee. More than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States. He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal; and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void."

The two West Virginia cases are: State v. Goodwill, 10 S. E. Rep., 285; and State v. Fire Creek Coal & Coke Company, 10 S. E. Rep., 288. These cases were decided November 18th, 1889. The State of West Virginia, in 1887, passed the same act as the State of Virginia passed in the same year, which is the one above quoted, 3657*d*; the two acts are identical in language, or practically so. The Goodwill case decided the scrip question, or Sec. 3 of the Act; while the Fire Creek Coal & Coke Company case decided the Commissary profit feature contained in Sec. 4. Both of these cases were fully considered and the authorities collected, and the Court without hesitation, and unanimously, held both Sections 3 and 4 unconstitutional.

9 Such legislation was held to be class legislation and on that ground unconstitutional, and also on the ground that it violated the Bill of Rights and 14th Amendment to the United States Constitution above referred to. We quote the following from the opinion of the Court in the Goodwill case:

"The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him in employing these in what manner he may think proper, without injury to his neighbor, is a plain violation of this most sacred property. It is equally an encroachment upon the just liberty and rights of the workman and his employer, or those who may be disposed to employ him, for the legislature to interfere with the freedom of contract between them; as such interference hinders the one from working at what he thinks proper and at the same time prevents others from employing whom he chooses. A person living under the protection of this government has the right to adopt and follow any lawful industrial pursuit, not injurious to the community, which he may see fit. And, as incident to this, is the right to labor or employ labor; make con-

tracts in respect thereto, upon such terms as may be agreed upon by the parties; to enforce all lawful contracts; to sue, and give evidence; and to inherit, purchase, lease, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression. These principles have been fully recognized and announced in many decisions of the Supreme Court of the United States, and other courts."

From the case of State v. Fire Creek Coal & Coke Company, Supra, we quote the following:

"There are many considerations for selling goods or supplies at less percent of profit to one customer than to others. The goods may be of the 'like character, kind, quality and quantity,' and still there may be considerations, entirely proper, why the sale should not be at the same price in all cases—such as the character and promptness of the customer; the risk of loss or time of payment, the aggregate amount of purchases by the same person of different kinds of goods or supplies. It may be more profitable to sell a large bill of different kinds of goods to a large consumer than to sell one of the same kind of articles to one who buys nothing else. * * * The ground on which this act is condemned is that it is class legislation, and an unjust interference with the rights, privileges and property of both the employer and the employee, and places upon both the badge of slavery, by denying to the one the right to manage his own private business, and assuming that the other has so little capacity and manhood as to be unable to protect himself, or manage his own private affairs."

There are a number of similar cases which have been passed on by the courts of other states, pointing in the same direction but not coming so closely up to our Act as the West Virginia cases. We refer to only one of these, in Millet v. People, 117 Ill., 294, 7. N. E. Rep. 631, the Supreme Court of Illinois, in a well-considered opinion, held unconstitutional and void an Act of the legislature of that State which required the owners or operators of mines to provide scales for weighing their coal, and make the weight of coal the basis of the wages of miners. A part of the syl-abus is as follows:

"It is not competent for the Legislature, under the Constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property of employers of labor, and prohibit them from making contracts which it is competent for other owners of property of employers of labor to make. Such legislation cannot be sustained as an exercise of the police power."

The case of Braceville Coal Company v. People 147, Ill., 66, 37 Am. St. Rep. p. 206, is a case which construes a similar statute to the one in question and considers many phases of the various questions which arise on the question of the right to contract; the Court says:

"If any person is denied the right to contract and acquire property in the manner which he has long enjoyed under the law, and which others are still allowed by the law to enjoy, he is deprived

of both the constitutional right of liberty and property, to the extent he is thus denied the right to contract."

In case of Avent-Beattyville Coal Company v. Commonwealth 28 L. R. A. 273 the Kentucky Court of Appeals held un-
11 constitutional a statute similar in all respects to the one now under consideration, as also did the Missouri Court in the case of State v. Missouri Tie & Timber Company, 181 Mo. 536, 80 S. W. 933, 101 Am. State Rep. 614 decided in May 1904.

IV.

The Act in question requires that when an employee is paid it shall be in lawful money, or in paper redeemable in lawful money, payable on demand and bearing a legal rate of interest. This clearly does not cover an advance for wages. No debt can bear interest until it is due. None of the scrip in controversy herein was issued after the wages of the laborers in question had become due. It is clear therefore that the Act is aimed, not at advance payments in the form under consideration, but only at payments made in the prohibited form on or after pay-day.

Wherefore, for the reasons above assigned, Petitioner prays that it be granted a writ of error to the judgment of the Circuit Court of Lee County complained of herein and that upon a final hearing hereof the said judgment may be reversed and annulled and judgment given for Petitioner.

KEOKEE CONSOLIDATED COKE CO.,
By COUNSEL.

PENNINGTON BROS.,
IRVINE & MORISON,
For Petitioner.

12 STATE OF VIRGINIA,
County of Wise:

I, R. T. Irvine, an Attorney practicing in the Supreme Court of Appeals of Virginia certify that in my opinion there is error in the judgment complained of in the foregoing petition for a writ of error and that the same should be reviewed by the Supreme Court of Appeals of Virginia.

Given under my hand this 9th day of May, 1911.

R. T. IRVINE.

Received May 10, 1911.
JAMES KEITH.

Refused.
JAMES KEITH.
R. H. CARDWELL.
STAFFORD G. WHITTLE.
GEORGE M. HARRISON.
JOHN A. BUCHANAN.

13 VIRGINIA:

Circuit Court of Lee County, Va.

In Assumpsit.

KELLY-HICKAM COMPANY, Plaintiffs,
vs.
KEOKEE CONSOLIDATED COKE COMPANY, a Corporation, Defendant,

and

In Assumpsit.

KELLY-HICKAM COMPANY, Plaintiffs,
vs.
KEOKEE COAL & COKE COMPANY, a Corporation, Defendant.

Pleas before the Circuit Court of Lee County, at the Court House thereof, on the — day of Septeniber, 1910. Be it remembered that heretofore, to-wit, at rules held for the said court in the Clerk's Office, on the 3rd Monday in April, 1910, came J. P. Kelly, A. P. Hickam and G. E. Woliver, merchants and partners in trade doing business under the firm name of Kelly-Hickam Company and filed their de*l*carations against the Keokee Consolidated Coke Company, a corporation and the Keokee Coal & Coke Company, a corporation, respectively, which are as follows, to-wit:

Declaration.

VIRGINIA:

In the Circuit Court for Lee County.

J. P. Kelly, A. P. Hickam and G. E. Woliver, merchants and partners in trade doing business under the firm name of Kelly-Hickam Company, complains of the Keokee Consolidated Coke Company, a corporation, who has been duly summoned, of a plea of trespass on the case in assumpsit, for this to wit, that heretofore to-wit, on the — day of ——, 1909, the said defendant was indebted to the following named persons in the amounts set opposite their respective names, who were employees of said defendant in and about
14 its coal mines and coking plants situated at Keokee in Lee County, Virginia, for work and labor done and services rendered by said employees for said defendant at its special instance and request, to wit:

Frenklin Caudill	$2.00	Jeff Cook	2.00
Jacob Hatfield	2.00	Moses Caudill	2.00
H. V. Gilliam	2.00	E. Hicks	2.00
C. Flanary	2.00	A. L. Parrish	2.00
Jeff Cook	1.00	A. L. Parrish	1.00
A. Pennington	1.00	C. H. Carter	2.00
C. Bradford	2.00	Jas. Whitehead	3.00
J. N. Schoolcraft	3.00	Dock Hall	3.00
John Shepherd	3.00	W. G. Burch	3.00
W. H. McConnell	2.00	Burnett Lawson	2.00
L. D. Garber	2.00	G. S. Gross	2.00
Harvey Davis	2.00	E. L. Robbins	2.00
Chas. Reese	2.00	M. D. Fleenor	2.00
W. A. McNiel	2.00	M. L. Ward	2.00
L. A. Counts	2.00	Pet Miller	2.00
Geo. Rogers	2.00	Chas. Reese	2.00
John Wilson	2.00	E. Johnson	2.00
Joe Baker	2.00	Will Clark	2.00
Joe Waler	2.00	Jack Clark	2.00
W. B. Taylor	2.00	T. T. Sykes	2.00
W. M. Young	2.00	Jerry Williams	2.00
B. Fulio	2.00	R. Marina	2.00
C. S. Albright	2.00	J. C. Adams	2.00
J. S. Rice	2.00	Taylor Phillipps	1.00
Dock Hall	2.00	Henry Owens	2.00
Chas. Coeburn	1.00	Andy Mudd	1.00
Milt Mullins	1.00	L. D. Garber	1.00
J. M. Smith	1.00	J. M. Smith	1.00
T. T. Sykes	1.00	C. W. Harman	1.00
Jeff Cook	1.00	T. T. Sykes	1.00
Geo. Sampson	1.00	H. T. Lawson	1.00
Will Wallen	1.00	Boyd Pennington	1.00
J. W. Colson	1.00	Patton Yeary	1.00
T. T. Sykes	1.00	W. H. Hall	1.00
J. W. Wilson	1.00	Jeff Cook	1.00
Will McCrary	1.00	T. T. Sykes	1.00
Chas. Fleenor	1.00	J. E. Oaks	1.00
Chas. Rice	1.00	Coy Smith	1.00
John Wilson	1.00	Joe Wallen	1.00
Bob Pearson	1.00	Burlie Clark	1.00
D. M. Catron	1.00	J. M. Ruth	1.00
A. F. Page	3.00	Steve Henley	3.00
B. F. Necessary	3.00	A. P. Newton	3.00
A. P. Willcon	3.00	Levi Lewis	3.00
Dock Stanton	3.00	Ed West	3.00
J. C. Adams	3.00	Tom Jackson	3.00
J. M. Ruth	1.00		

The whole of which said indebtedness amounted to a large sum of money, to-wit, the sum of $—, and being so indebted to said employees as aforesaid, they the said employees sold and

15 transferred their said indebtedness to the said plaintiffs, of which said sale and transfer as aforesaid the said defendants then and there had notice, by means whereof the said defendant became indebted to the said plaintiffs in a large sum of money, to-wit, in the sum of $— and being so indebted to the said plaintiffs as aforesaid, it, the said defendant, afterwards, to-wit, on the — day of ——, 1909, in consideration thereof agreed undertook and faithfully promised said plaintiffs to pay them said sum of money whenever thereunto afterwards requested.

And for this also heretofore to-wit, the said Keokee Consolidated Coke Company, a corporation, was indebted to the employees mentioned and enumerated in the first count hereof and in the amounts therein mentioned for work and labor done and services rendered in and about the mining of coal and the manufacture of coke at its coal and coking plants situated at Keokee in Lee County, Virginia, and being so indebted to said employees as aforesaid, the said defendant afterwards, to-wit on the — day of ——, 1909, agreed, undertook and faithfully promised to pay said employees and each of them the full amount and value of the labor which said employees had done and performed for it whenever thereunto afterwards requested. And the said employees and each of them afterwards, to-wit, on the — day of ——, 1909, sold and transferred said indebtedness of the said Keokee Consolidated Coke Company to the said plaintiffs, and in consideration thereof the said defendant afterwards, to-wit, on the — day of ——, 1909, agreed, undertook and faithfully promised said plaintiffs to pay the said sums of money whenever thereunto afterwards requested, which said sums amounted in the aggregate of $——.

16 And for this also, to-wit, that on the — day of —— 1909, in the said County of Lee, the said defendant was justly indebted to the parties and persons enumerated in the first count hereof and in the various and respective amounts therein named, its employees, for work and labor done and services rendered to the said defendant in and about the mining of coal and the manufacturing of coke at their coal and coking plant situated at Keokee in Lee County, Virginia, at its special instance and request, and being so indebted to the said employees the said defendant, the Keokee Consolidated Coke Company, incorporated, at its said Keokee operation in Lee County, Virginia, issued and delivered to each of said employees a paper commonly called "scrip" for the amount of his said labor, which is in the shape of an order and reads as follows "Please pay to bearer, in merchandise only, from your store at Keokee, to the value of attached coupon not to exceed amount shown at left and charge the full amount shown herein to my account." And each of the aforesaid employees of the said defendant afterwards, to-wit, on the — day of ——, 1909, sold and transferred and delivered their said several respective papers commonly called scrip to the said plaintiffs while said defendant was so indebted to them, the said employees as aforesaid, by means whereof the said defendant became indebted to the said plaintiffs in a sum equal to the aggregate amount of said papers commonly called scrip, which in

the whole amount to the sum of $——, the value of work done and labor performed for said defendant at its special instance and request by said employees as aforesaid, and being so indebted to the said plaintiffs the said defendant afterwards to-wit, on the — day of ——, 1909, agreed, undertook and faithfully promised said plaintiffs to pay them said several sums of money whenever thereunto afterwards requested.

17 Yet the said defendant, not regarding its several promises and undertakings aforesaid, hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do, but to pay the same or any part thereof to the said plaintiff, the said defendant hath hitherto wholly refused and still doth refuse and neglect so to do, to the damages of the said plaintiff $500.00. Therefore they bring their suit.

J. C. NOEL,
DUNCAN & CRIDLIN,
p. q.

Declaration.

VIRGINIA:

In the Circuit Court for Lee County.

J. P. Kelly, A. P. Hickam and G. E. Woliver, merchants and partners in trade doing business under the firm name of Kelly-Hickam Company, complains of the Keokee Coal & Coke Company, a corporation, who has been duly summoned, of a plea of trespass on the case in assumpsit, for this to-wit; that heretofore to-wit, on the — day of ——, 1909, the said defendant was indebted to the following named persons in the amounts set opposite their respective names, who were employees of said defendant in and about its coal mines and coking plants situated at Keokee in Lee County, Virginia, for work and labor done and services rendered by said employees for said defendant at its special instance and request, to-wit:

John Edens, Jr.	$5.00	James Duboe	$5.00
Ed Smith	5.00	John Douglass	5.00
Scott Dyer	5.00	Ed Smith	5.00
J. M. McCoy	5.00	E. Owens	5.00
D. Lawson	5.00	Will Clark	5.00
R. Quesenberry	5.00	Dowe Hill	5.00
C. F. Bush	5.00	Walter Campbell	5.00
18 Clarence Wright	5.00	Jim Cruthers	5.00
Walter Campbell	4.00	Tom Storks	4.00
Ed West	4.00	Ed Smith	4.00
Steve Isom	4.00	Earnest Hicks	4.00
A. Lone	4.00	Will Haley	4.00
Will Haley	4.00	Arthur Sturgill	4.00
Arthur Sturgill	4.00	Will Clark	4.00

John Rush	4.00	Alex Zylhoskey	4.00
Clint Goins	5.00	Clint Jones	5.00
G. Lee	5.00	Levi Harris	3.00
A. Williams	3.00	John Rice	3.00
Gentle Lee	3.00	Walter Campbell	3.00
J. D. Bush	3.00	W. D. Davis	3.00
D. Bush	3.00	Dave Hill	3.00
G. L. Parrish	3.00	A. L. Parrish	3.00
Wm. Bush	3.00	Jack Harris	3.00
John Douglass	4.00	J. M. Kellogg	2.00
Pink Patterson	1.00	S. T. Ison	1.00
W. E. Brewer	1.00	W. Kellogg	1.00
A. T. Page	1.00	J. W. Ward	1.00
A. T. Page	1.00	J. Baker	1.00
E. Overton	1.00	E. Overton	1.00
Chas. Flanary	1.00	John Flanary	1.00
Will McCoy	5.00	Will McCoy	5.00
Will McCoy	5.00	Peter Balletti	4.00
Auzeto Marina	4.00	Peter Balletti	4.00
J. B. Motta	4.00	Bob W. Luski	4.00
Burnett Lawson	4.00	Coy Smith	4.00
Patton Fee	4.00	John Goins	5.00
Russell Hoskins	5.00	M. D. Fleenor	5.00
Andy Kosa	5.00	Leonard Curl	5.00
Coy Smith	5.00	John Fields	5.00

The whole of which said indebtedness amounted to a large sum of money, to-wit, the sum of $—, and being so indebted to said employees as aforesaid, they the said employees sold and transferred their said indebtedness to the said plaintiffs, of which said sale and transfer as aforesaid the said defendant then and there had notice, by means whereof the said defendant became indebted to the said plaintiffs in a large sum of money, to-wit, in the sum of $—, and being so indebted to the said plaintiffs as aforesaid, it, the said defendant, afterwards to-wit, on the — day of ——, 1909, in consideration thereof agreed, undertook and faithfully promised said plaintiffs to pay them said sum of money whenever thereunto afterwards requested.

19 And for this also heretofore, to-wit, the said Keokee Coal & Coke Company, a corporation, was indebted to the employees mentioned and enumerated in the first count hereof and in the amounts therein mentioned for work and labor done and services rendered in and about the mining of coal and the manufacturing of coke at its coal and coking plants situated at Keokee in Lee County, Virginia, and being so indebted to said employees as aforesaid, the said defendant afterwards, to-wit, on the — day of ——, 1909, agreed, undertook and faithfully promised to pay said employees and each of them the full amount and value of the labor which said employees had done and performed for it whenever thereunto afterwards requested. And the said employees and each of them afterwards, to-wit, on the — day of ——, 1909, sold and transferred

said indebtedness of the said Keokee Coal & Coke Company to the said plaintiffs and in consideration thereof the said defendant afterwards, to-wit, on the — day of ——, 1909, agreed undertook and faithfully promised said plaintiffs to pay them the said sums of money whenever thereunto afterwards requested, which said sums amounted in the aggregate to $——.

And for this also, to-wit, that on the — day of ——, 1909, in the said County of Lee, the said defendant was justly indebted to the parties and persons enumerated in the first count hereof and in the various and respective amounts therein named, its employees, for work and labor done and services rendered to the said defendant in and about the mining of coal and the manufacturing of
20 coke at their coal and coking plants situated at Keokee in Lee County, Virginia, at its special instance and request, and being so indebted to the said employees the said defendant, the Keokee Coal & Coke Company, incorporated, at its said Keokee operation in Lee County, Virginia, issued and delivered to each of said employees a paper commonly called scrip for the amount of his said labor, which is in the shape of an order and reads as follows "Please pay to bearer, in merchandise only, from your store at Keokee, at the value of attached coupon not to exceed amount shown at left and charge the full amount shown herein to my account." And each of the aforesaid employees of the said defendant afterwards, to-wit, on the — day of ——, 1909, sold and transferred and delivered their said several respective papers commonly called scrip to the said plaintiffs while said defendant was so indebted to them, the said employees as aforesaid, by means whereof the said defendant became indebted to the said plaintiffs in a sum equal to the aggregate amount of said papers commonly called scrip, which in the whole amounts to the sum of $—, the value of work done and labor performed for said defendant at its special instance and request by said employees as aforesaid, and being so indebted to the said plaintiffs the said defendant afterwards to-wit on the — day of ——, 1909, agrees, undertook and faithfully promised said plaintiffs to pay them said several sums of money whenever thereunto afterwards requested.

Yet the said defendant, not regarding its several promises and undertakings aforesaid, hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiffs, although often requested so to do, but to pay the
21 same or any part thereof to the said plaintiffs, the said defendant hath hitherto wholly refused and still doth refuse and neglect so to do, to the damage of the said plaintiff $500.00. Therefore they bring their suit.

J. C. NOELL, *p. q.*
DUNCAN & CRIDLIN, *p. q.*

Defendant's Plea No. 1.

Plea No. 1 is as follows:

Lee Circuit Court.

In Chancery.

KELLY-HICKAM COMPANY, Plaintiff,
vs.
KEOKEE COAL & COKE COMPANY, Defendant.

and

KELLY-HICKAM COMPANY, Plaintiff,
vs.
KEOKEE CONSOLIDATED COKE COMPANY, Defendant.

The defendant the Keokee Consolidated Coke Co., by its attorney comes and says, that the whole of the plaintiff's supposed cause of action herein should be against it, that the Keokee Coal & Coke Company was a foreign Corporation organized and existing under the laws of the State of New Jersey and the said Company was before the institution of this action dissolved by action of its stock-holders and officers in accordance with the laws of New York, and its cerificate of dissolution was on the — day of January, 1910, filed with the State Corporation Commission of Virginia, and on said last named date a certificate of dissolution was issued by the said Commission. It therefore says that there is not and was not at the time of the bringing of the suits, any such corporation as the
22 Keokee Coal & Coke Company. It says that it, the said Keokee Consolidated Coke Company, succeeded to all the rights and became subject to all the liabilities of said Keokee Coal & Coke Company in and about the matters involved herein, and that whatever right of action, if any, the plaintiffs have in the premises, they have against your defendant alone. Therefore defendant moves the court to consolidate the said two causes of action and to require the plaintiffs hereafter to proceed solely against your defendant, and this the defendant is ready to verify.

And at another day, to-wit:

VIRGINIA:

At a Circuit Court Continued and Held for Lee County, at the Courthouse Thereof, on Friday the 16th Day of September, 1910.

Lee Circuit Court.

KELLY-HICKAM COMPANY, Plaintiff,
vs.
KEOKEE CONSOLIDATED COKE COMPANY, Defendant.

and

KELLY-HICKAM COMPANY, Plaintiff,
against
KEOKEE COAL & COKE COMPANY, Defendant.

This day came the parties by their counsel and by agreement of counsel and pursuant to the plea filed in these causes by the Keokee Consolidated Coke Company at a former term of this Court, it is ordered that these two causes be consolidated and be proceeded against in the name of said Keokee Consolidated Coke Com-
23 pany as the only defendant, and thereupon the defendant pleaded the general issue of non-assumpsit and issue was joined thereon.

And thereupon the parties hereto by their counsel filed a writing setting forth an agreed statement of facts which are the only facts to be considered in this cause and both parties waived a jury and submitted to the court the decision of all questions of law and fact upon the said agreed statement of facts and the pleadings herein, the defendant by counsel contending that to grant a judgment for money upon the scrip mentioned and set out in the declarations herein as the basis of the cause of action herein violates the constitution of the State of Virginia and the constitution of the United States. And the Court having heard argument of counsel and being fully advised, doth over-rule the contention of the defendant and gives judgment for the plaintiff for the amount of the scrip sued on and set out in the declarations herein; it is, therefore, considered by the court that the plaintiffs recover of the defendant the sum of $438.84, with interest from 1st day of January, 1910, and his costs herein expended for which execution shall issue, to which judgment of the court the defendant by counsel excepted but the court overruled said exception and gave judgment as aforesaid, and the defendant tendered its bill of exceptions which was signed and sealed by the court and made a part of the record.

Memorandum.

The defendant, the Keokee Consolidated Coke Company, feeling itself aggrieved by the foregoing judgment rendered against it, and

having signified to the court its intention to apply to the Supreme Court of Appeals of Virginia for a writ of error to the said judgment, it is therefore ordered that this judgment be suspended for the space of 90 days conditioned upon the defendant or some one for
24 it, executing before the Clerk of this Court, within twenty days from this date, a suspending bond conditioned according to law in the penalty of $100.00.

Bill of Exceptions.

By Defendant, is as follows:

Lee Circuit Court.

Defendant's Bill of Exceptions.

Be it remembered that upon the trial of this cause the plaintiffs and defendant by their counsel filed a writing setting forth an agreed Statement of facts in this cause which is in the words and figures following:

Lee Circuit Court.

KELLY-HICKAM COMPANY
vs.
KEOKEE CONSOLIDATED COKE COMPANY.

KELLY-HICKAM COMPANY
vs.
KEOKEE COAL & COKE COMPANY.

Agreement of Counsel.

By their counsel in these causes now pending in the Circuit Court of Lee County, Virginia, it is agreed:

(1) That the causes be consolidated and hereafter prosecuted against the Keokee Consolidated Coke Company, Incorporated, as the only defendant, pursuant to the pleas filed herein at the last May term of Court.

(2) That the declarations herein correctly set out the names of the parties to whom the scrip of the defendant company was issued and the amounts thereof; that said scrip was issued in the due course of business of the defendant company's plant at Keokee, Lee County, Virginia, between the dates of — and —; and that
25 no part of the several items of scrip mentioned in the said declarations has been paid by the defendant company, or any one for it since the same was issued, either in money or merchandise, but that none of said scrip has ever been presented for redemption by defendant company in merchandise, and no request for the redemption in merchandise has been at any time made upon the defendant company by the holder or holders of said scrip, but that

payment in money had been demanded at and after the next pay day after the issuance of said items of script.

(3) Attached hereto, and marked Exhibit "A", is a sample of the scrip in controversy, which is the same or substantially the same as all the separate scrip items sued on. This scrip consists, as is shown by said Exhibit, of a detachable, perforated slip attached to stub and bound in a book like an ordinary bank check book of large size, in the center of which slip are the following words, to-wit:

"Keokee Consolidated Coke Co., Keokee, Va.
Incorporated.
Keokee Operation.

Please pay to bearer, in merchandise only, from your store, at Keokee to the value of attached coupons, not to exceed amount shown at left and charge full amount shown hereon to my account.

By —— ——.

Date —— —, 191-."

At the left of the aforesaid words are the figures "$2.00" and the words "Two Dollars," under which is the serial number of the slip, which corresponds to stub number. Around the border of this slip are various figures with letter "c" thereafter, indicating cents, which add up the total of Two Dollars in the sample given, or in other cases the total of the amount named at left on the slip.

26 The custom of the defendant company since the beginning of its operation in Lee County in 1906, until the present time, has been, and is, to issue to its employees these slips, commonly known as Scrip, as an advance in the payment of monthly wages before or between regular pay days. When the employee applies for scrip, he either signs his name on the face of this slip, or it is done by the scrip clerk in the presence of the employee and at his request, in which case the scrip clerk signs his own name or initials under the name of the applicant on the line shown by the words "by —— ——," and the date is entered on the line on the left and below. The account of the employee is then charged on the books of the Company with the full amount of scrip thus issued and the employee or bearer is authorized to present this scrip at the Company's Commissary and obtain merchandise thereon at the usual prices and in the ordinary course of sales at the commissary, not to exceed the amount shown on the face of the slip. The amount actually taken up by the employee on any occasion when he makes a purchase upon account of said scrip is punched by the clerk of the commissary who sells to such employee, and this continues until the full amount of the particular piece of scrip is punched, when the slip is turned in to the company and cancelled. The defendant company has never redeemed any of its scrip in money, (but has always redeemed the same in merchandise when requested if same was in store) which is true of all the scrip sued on in this case.

(4) The defendant company has at all times since the beginning of its operation in Lee County had one regular payday each month,

to-wit, the first Saturday after the 15th of each month, on the
27 said payday settlement is made in full with each of its employees and a statement is given the employee in writing which shows his total earnings for the last preceding calendar month and the total amount of debts against him, and the balance due is paid in cash, each employee being handed an envelope giving a statement of his account and containing in cash the balance due after all deductions.

The foregoing manner of settlement with its employees was in use at the time when each of the parties to whom scrip was issued, as is shown by the declarations herein, began to work for defendant company, and continued from thence to the present time, and such mode of payment was known to each of the said parties and was acquiesced in by them.

(5) It is further agreed that the defendant company has at all times since the issuance of the first piece of scrip involved herein to the present time maintained a commissary at its Keokee plant in Lee County, which contains a general line of merchandise, and that it has at all times been willing ready and able to redeem any and all of the scrip sued on herein in merchandise at the usual and prevailing prices at its said store; and that it is not indebted, and was not at the time of the bringing of these suits indebted to any of the parties named in the declarations herein other than on account of the scrip mentioned and set forth therein, which scrip was issued to the said respective parties in the payment of labor performed by each respectively, and at the request of each; and that the plaintiff herein acquired the said scrip from the said respective parties for value in the ordinary course of business.

(6) This agreement of facts constitutes all of the evidence on both sides of this controversy, and it is agreed all matters of
28 law and fact shall be submitted upon the pleadings herein and this agreement of facts for decision.

(Signed) C. T. DUNCAN AND
J. C. NOEL,
For Plaintiffs.
PENNINGTON BROS. AND
IRVINE & MORISON,
For Defendant.

Which agreed statement of facts contained all the evidence in the cause and both parties having waived a jury and sumitted all questions of law and fact to the court, the court thereupon gave judgment for the plaintiffs to which action of the court the defendant excepted and moved the court to give judgment for the defendant on the ground that the judgment in favor of the plaintiffs was contarry to the law and evidence, but the court over-ruled the motion of the defendant and gave judgment for the plaintiff, to which action of the court the defendant excepted and presented this its bill of exceptions which is signed and sealed by the court and made a part of the record.

H. A. W. SKEEN. [SEAL.]

VIRGINIA,
Lee County, To wit:

I, H. C. T. Ewing, Clerk of the Circuit Court for Lee County, do hereby certify that the foregoing is a true and perfect transcript and copy of the record of the law causes of Kelly-Hickam Company vs. Keokee Consolidated Coke Company and Kelly-Hickam Company vs. Keokee Coal & Coke Company in the Circuit Court of Lee County, Virginia, and I further certify that the plaintiff's counsel in said cause had notice of the application by defendant's counsel for this copy to be made by the undersigned.

Given under my hand this the 5th day of November, 1910.

Fee $5.00.

H. C. T. EWING, *Clerk.*

29 STATE OF VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals, at Wytheville, Virginia, This the 24th Day of August, 1911.

I, J. M. Kelly, Clerk of the Supreme Court of Appeals of Virginia at its place of session at Wytheville, Virginia, hereby certify that the foregoing pages, numbered 1 to 28 inclusive, contain a full, complete and true copy of the petition of the Keokee Consolidated Coke Company and record therewith presented to one of the Judges of this Court in vacation on the 10th day of May, 1911, and also of the refusal of a writ in this cause, as shown by endorsement on said petition, which endorsement of refusal was made by each and all the members of the said Supreme Court of Appeals of Virginia, the original of which petition and transcript of record are now on file in and are a part of the records of my said orrice, and that the foregoing is a true, full and complete copy of the record of said case and of the proceedings by said Court therein.

Witness my hand and the seal of said Court at Wytheville, Virginia, on this the 24th day of August, 1911.

J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia, at Wytheville.

30 STATE OF VIRGINIA,
Supreme Court of Appeals, ss:

I, James Keith, one of the Judges, and President of the Supreme Court of Appeals of Virginia, do hereby certify that the foregoing attestation made by J. M. Kelly, the Clerk of the said Court at Wytheville, is in due form, and that the foregoing is his true and genuine signature.

Given under my hand this the 31st day of August, 1911.

JAMES KEITH,
President Supreme Court of Appeals of Virginia.

SUPREME COURT OF APPEALS,
State of Virginia, ss:

I, J. M. Kelly, Clerk of the Supreme Court of Appeals of Virginia at Wytheville, do hereby certify that the Honorable James Keith, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same, one of the Judges and President of the Supreme Court of Appeals of the State of Virginia, duly commissioned and qualified.

Witness my hand and seal of said Court this 31st day of August, 1911.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia, at Wytheville.

31 In the Supreme Court of Appeals of Virginia.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff in Error,
vs.
KELLY-HICKAM COMPANY, Defendants in Error.

Petition for Writ of Error from the Supreme Court of the United States to the Supreme Court of Appeals of Virginia.

Your petitioner, the Keokee Consolidated Coke Company, respectfully represents that J. P. Kelly, A. P. Hickam and G. E. Woliver, partners in trade under the firm name and style of Kelly Hickam Company, heretofore instituted an action of assumpsit against your petitioner in the Circuit Court of Lee County, Virginia; that on the 16th day of September, 1910, the said Circuit Court of Lee County, in the suit aforesaid, rendered judgment against your petitioner in favor of the said Kelly Hickam Company for the sum of $438.84, with interest from January 1st, 1910, and the costs of said suit; that thereafter, to-wit, on the 10th day of May, 1911, your petitioner filed in this Honorable Court its petition for a writ of error and supersedeas in the said cause, together with a transcript of the record thereof; and that on the 10th day of May, 1911, this Honorable Court entered an order refusing to grant the writ of error prayed for in the said petition, on the ground that the judgment complained of was plainly right.

Your petitioner says that there is manifest error in the action of this Honorable Court in refusing to grant the said writ of error and in not reversing the said judgment of the said Circuit Court of Lee County, and it now files herewith in the Clerk's Office of this Hon-

orable Court an assignment of errors, and now offers to give
32 such supersedeas bond as may be required with good and sufficient sureties, conditioned as required by law, and prays that a writ of error be granted it from the Supreme Court of the United States to the Supreme Court of Appeals of Virginia, com-

manding that the record in the said cause be certified to the said Supreme Court of the United States and that a citation issue as provided by law, and that the judgment of this Court in refusing to grant the said writ of error be reversed and annulled, and that the aforesaid judgment of the Circuit Court of Lee County be likewise reversed and annulled, and that all proceedings in the said cause be stayed until said errors shall have been heard and determined.

Respectfully,

KEOKEE CONSOLIDATED COKE COMPANY,
By R. T. IRVINE,
J. F. BULLITT, *Attorneys.*

Writ of error allowed upon the execution of bond by the Keokee Consolidated Coke Company, or some one for it, in the sum of One Thousand Dollars; and said bond, when approved, to act as a supersedeas.

Dated on the 25th day of September, 1912.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

A copy.
Teste:
J. M. KELLY,
Clerk Sup. Ct of Appeals of Va.

33 In the Supreme Court of Appeals of Virginia.

KEOKEE CONSOLIDATED COKE COMPANY, Plaintiff in Error,
vs.
KELLY-HICKAM COMPANY, Defendants in Error.

Assignment of Errors.

The Keokee Consolidated Coke Company, plaintiff in error in the above styled cause, states that there is manifest error on the face of the Record therein in that it therein appears that the action of the Circuit Court of Lee County, in rendering judgment against the plaintiff in error was based upon the provisions of a certain act of the General Assembly of Virginia, entitled "An Act to amend and re-enact Section 3, of Chapter 391, of the Acts of 1887, entitled an Act to secure to operatives and laborers engaged in and about coal mines, manufactories of iron and steel, and all other manufactories, the payment of their wages at regular intervals, and in lawful money of the United States," approved February 13th, 1888, the third section whereof reads as follows, to-wit:

"§3. That from and after the passage of this Act, it shall not be lawful for any person, firm, company, corporation, or association, engaged in the business aforesaid, their clerk, agent, officer, or servant, in this State, to issue for the payment of labor, any order, or other payment whatever, unless the same purports to be redeemable

for its face value in lawful money of the United States, made payable on demand and without condition, to employee or bearer, bearing interest at legal rate and redeemable by the person, firm, company, corporation, or association, giving, making, or issuing the same; and any person, firm, company, corporation or association, engaged in the business aforesaid, their clerks, agents, officers,
34 or servants, who shall issue for the payment of labor any paper or order, other than the one herein specified, in violation of this section, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not exceeding one hundred dollars in the discretion of the Court."

And it is likewise manifest that this Honorable Court in refusing to grant a writ of error to the judgment of the said Circuit Court of Lee County likewise based its action upon the said Act of the General Assembly of the State of Virginia:

But plaintiff in error is advised and charges that the said Act of the State of Virginia is repugnant to the Constitution of the United States, and particularly to the Fourteenth Amendment of the said Constitution, and that the said Act of Virginia is, therefore, null and void; and that the said Circuit Court of Lee County committed error in not so holding, and that this Honorable Court likewise committed error in not so holding and in not granting the said writ of error to the aforesaid judgment of the Circuit Court of Lee County.

KEOKEE CONSOLIDATED COKE COMPANY,
By R. T. IRVINE AND
J. F. BULLITT.
Attorneys for Keokee Consolidated Coke Company.

A copy.
Teste:
J. M. KELLY,
Clerk Supreme Court of Appeals of Va.

35 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Appeals of Virginia before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Keokee Consolidated Coke Company and J. P. Kelly, A. P. Hickam and G. E. Woliver, partners in trade under the firm name and style of Kelly, Hickam Company, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in ques-

tion the construction of a clause of the Constitution, or of
36 a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Keokee Consolidated Coke Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within — days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 25th day of September, in the year of our Lord one thousand nine hundred and twelve.

STANLEY W. MARTIN,
Clerk of the District Court of the United States for the Western District of Virginia.
By C. C. COCHRAN,
Deputy Clerk.

Allowed by

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Filed Sept. 26, 1912. Teste: J. M. Kelly, Clerk Sup. Ct. of Appeals of Va.

37 UNITED STATES OF AMERICA, *ss:*

To J. P. Kelly, A. P. Hickam, and G. E. Woliver, partners in trade under the firm name and style of Kelly Hickam Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of Appeals of Virginia, wherein the Keokee Consolidated Coke Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speeedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 25th day of Sep-

tember in the year of our Lord one thousand nine hundred and twelve.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Attest:

J. M. KELLY,
Clerk Sup. Ct. of Appeals of Va.

38 Service of the within citation is hereby accepted for each and all of the within named defendants in error on this the 19 day of Oct., 1912.

J. C. NOEL,
Attorney for Defendants in Error.

39 Know all men by these presents, That we, A. H. Reeder, R. T. Irvine and J. F. Bullitt, are held and firmly bound unto J. P. Kelly, A. P. Hickam and G. E. Woliver, partners in trade under the firm name and style of Kelly Hickam Company, in the full and just sum of One Thousand Dollars ($1,000.00) Dollars, to be paid to the said Kelly Hickam Company, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this 25th day of September, in the year of our Lord one thousand nine hundred and twelve.

Whereas, lately in the Supreme Court of Appeals of Virginia in a suit depending in said court, between the Keokee Consolidated Coke Company, plaintiff in error, and the said J. P. Kelly, A. P. Hickam and G. E. Woliver, partners in trade under the firm name and style of Kelly Hickam Company, defendants in error, a judgment was rendered against the said —— —— and the said Keokee Consolidated Coke Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said J. P. Kelly, A. P. Hickam and G. E. Woliver, partners in trade under the firm name and style of Kelly Hickam Company, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Keokee Consolidated Coke Company shall prosecute said writ of error to effect, and answer all damages and costs if it
40 fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

A. H. REEDER, [SEAL.]
R. T. IRVINE, [SEAL.]
J. F. BULLITT. [SEAL.]

Sealed and delivered in the presence of
GEO. L. TAYLOR.

Approved by
JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Filed September 26th, 1912.
Teste:
J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia.

A copy,
Teste:
J. M. KELLY,
Clerk Supreme Court of Appeals of Virginia.

41 *Return to Writ of Error.*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

Witness my hand and the seal of the Supreme Court of Appeals of Virginia, on this the 24" day of October, 1912.

[Seal Supreme Court of Appeals of Virginia, Wytheville.]

J. M. KELLY,
Clerk of Supreme Court of Appeals of Virginia.

Endorsed on cover: File No. 23,412. Virginia Supreme Court of Appeals. Term No. 373. Keokee Consolidated Coke Company, plaintiff in error, vs. J. P. Kelly, A. P. Hickam and G. E. Woliver, partners in trade under the firm name and style of Kelly, Hickam Company. Filed October 31st, 1912. File No. 23,412.

In the Supreme Court of the United States.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFF IN ERROR,

vs.

J. P. KELLY, A. P. HICKAM AND G. E. WOLLIVER, PARTNERS IN TRADE UNDER THE FIRM NAME AND STYLE OF KELLY-HICKAM COMPANY, DEFENDANTS IN ERROR.

No. 373.

IN ERROR TO THE SUPREME COURT OF APPEALS OF VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR.

The facts in this case and the issues raised are exactly the same as in the case of Keokee Consolidated Coke Company v. W. W. Taylor, Sons & Witt, No. 372, with the

exception of the fact that the judgment against the defendant, the Keokee Consolidated Coke Company, in this case was for $438.84, while the judgment in that case was for $184.05. The other facts and issues being identically the same, we assume that it is unnecessary to write a separate brief in this case, and beg leave to rely upon our brief in the said case of W. W. Taylor, Sons & Witt, to which we here refer.

Respectfully submitted,

R. T. IRVINE,
J. F. BULLITT,
Of Counsel for Plaintiff in Error.

R. T. IRVINE,
BULLITT & CHALKLEY,
Counsel.

In the Supreme Court of the United States.

KELLY-HICKAM COMPANY, DEFENDANTS IN ERROR.

Ads.

KEOKEE CONSOLIDATED COKE COMPANY, PLAINTIFFS IN ERROR.

No. 373

IN ERROR TO THE SUPREME COURT OF APPEALS OF VIRGINIA.

BRIEF FOR DEFENDANTS IN ERROR

The facts in this case and the issues raised are exactly the same as in the case of Keokee Consolidated Coke Company v. W. W. Taylor Sons & Witt, No. 372, with the excep-

tion of the fact that the judgement against the defendant, the Keokee Consolidated Coke Company, in this case was for $438.84, while the judgement in that case was for $184.-05. The other facts and issues being identically the same, we assume that it is unnecessary to write a separate brief in this case, and, as was done by the plaintiff in error, we beg leave to rely upon our said brief in the said case of W. W. Taylor Sons & Witt, to which we here refer.

Respectfully, submitted,
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Of Counsel for Defendants in Error.

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